HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2) (b)

Description of the case.

W.P. No. 893 of 2001 (S/S)

State of Uttaranchal
Through Executive Engineer, Irrigation Deptt.
Vs.
Presiding Officer,
Labour Court, Dehradun & another.

Approval for reporting.

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Not approved for reporting.

Date of decision 27.07.2004

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 893 of 2001 (S/S)

State of Uttaranchal,
Through Executive Engineer,
Irrigation Department, Maneri Bhali,
Pariyojana Khand-II, Uttarkashi. …….Petitioner

Versus

Presiding Officer,
Labour Court, Dehradun & another. ……Respondents

Standing Counsel for the respondents.
Mr. Gopal Narain, learned counsel for respondent No. 2.

Dated:- 27.07.2004

Hon'ble Rajesh Tandon J.

By the present writ petition, the petitioner has prayed for the issue of a writ, order or direction in the nature of certiorari quashing the award dated 14.6.2000 passed by respondent no. 1 i.e. the Presiding Officer, Labour Court, Dehradun.

FACTS:

Brief facts giving rise to the present writ petition are that respondent no. 2 was appointed on 1.12.1987 as "Baildar" in the department of petitioner and he continued up to 6.6.1992, but on 7.6.1992, his services were terminated without any prior notice, which is in violation of the provisions contained under Section- 6 N of the Industrial Disputes Act 1947.

Therefore, the respondent no. 1 raised the dispute under section 4-K of the U.P. Industrial Disputes Act, 1947. Following matter was referred to the Presiding Officer, Labour Court, Dehradun:

"क्या सेवायोजकों द्वारा वादी श्रमिक विनोद कुमार पुत्र श्री कान्तिराम बेलदार की सेवायें दिनांक 7.6.92 से समाप्त किया जाना

अनुचित / अवैधानिक हैं यदि हाऱ्त्रतो वादी श्रमिक क्या हितलाभ / अनुतोप्र पाने का अधिकारी है, तथा अन्य किस विवरण के साथ''

The Labour Court after hearing both the parties held that the termination order passed by the petitioner – department is illegal and therefore, directed the petitioner to reinstate respondent No. 2, however because of delay in filing the claim petition, the Labour Court moulded the relief and awarded Rs. 5,000/- as compensation towards back wages and Rs. 1,000/- towards cost against the petitioner.

Being aggrieved by this judgment of the Labour Court, petitioner has preferred the present writ petition.

I have heard learned counsel for both the parties and perused the record.

After hearing both the parties, following points arise for determination:

i. Whether the findings of the Labour Court with regard to 240 days can be said to be Illegal?
ii. Whether the claim Petition having been filed after a lapse of several years, can be rejected as highly belated.
iii. Whether, the Irrigation Department, where the respondent No. 2 was working is not within the definition of the Industry?

Finding on point no. i:

The petitioner has stated that respondent No. 2 has not completed 240 days in whole calendar year.

The findings of the Labour Court. So far as point No. 1 is concerned, are quoted below:-

" सेवायोजकों की ओर से वादी श्रमिक के लिखित कथन का कोई प्रत्युत्तर प्रस्तुत नहीं किया गया और न्यायालय द्वारा दिए गए

निर्देप्रानुसार मस्टररोल दाखिल नहीं किए गए जिनसे स्पष्ट होता है कि वादी श्रमिक ने प्रत्येक वर्ष किन–किन महीनों में कितने दिन कार्य किया और इसका प्रभाव उनके विपरीत ही जायेगा। सेवायोजकों ने मा0 उच्च न्यायालय इलाहाबाद द्वारा उत्तर प्रदेप्र राज्य बनाम श्रम न्यायालय हल्द्वानी में 17.9.98 को दिए गए निर्णय का आश्रय लिया गया जिसमें यह कहा गया है कि दैनिक वेतनभोगी श्रमिकों पर औद्योगिक विवाद अधिनियम में दिए गए छटनी संबंधी प्राविधान लागू नहीं होते हैं। इसके विपरीत मा0 उच्चतम न्यायालय ने हाल ही में उ0प्र0 राज्य बनाम.....में दिये गए निर्णय में स्पष्ट किया है कि श्रमिक चाहे किसी भी प्रकार का हो वह चाहे दैनिक वेतन भोगी ही क्यों न हो यदि उसने 240 दिन से अधिक कार्य कर लिया है तो उसकी सेवायें उ0प्र0 औद्योगिक विवाद अधिनियम की धारा 6–एन में दी गई प्रक्रिया के अनुसार ही समाप्त की जा सकती हैं। ''

From the aforesaid findings, it is clear that the respondent No.2 has completed 240 days. The service of the respondent No. 2 having been terminated without considering the provisions of Section 6-N of the Industrial Disputes Act, the respondent No. 2 has been rightly granted the reinstatement by the Labour Court.

So far as completion of 240 days is concerned, there is sufficient material on the record that in spite of the opportunity given to the employer, he did not produce the muster roll. Whereas the respondent No. 2 has categorically stated that from 1.12.1987 to 7.6.1992 i.e. till the date of termination, he continued to work as daily wager.

Finding on point no. ii:

Learned Counsel for the petitioner has further argued that the claim petition has been filed after a period of several years and as such, the same is not maintainable as it is highly belated.

In Sapan Kumar Pandit Vs U.P. State Electricity Board & others reported in 2001 SC-SLR 658, the Apex Court has held as under:

"It is useful to refer to a three Judges Bench decision of this Court as it related to the scope of the very same provision i.e. Section 4-K of the U.P. Act. In M/s Western India Watch Co. Ltd. Vs the Western India Watch Co. Workers Union, AIR 1970 SC 1205, learned Judges made the following observations:

Therefore, the expression 'at any time', though seemingly without any limits, is governed by the context in which it appears. Ordinarily, the question of making a reference would and the conciliation officer has made a failure report. But the Government need not wait until such a procedure has been completed. In an urgent case, it can 'at any time', i.e. even when such proceedings have not begun or are still pending, decide to refer the dispute for adjudication. The expression 'at any time' thus takes in such cases as where the Government decided to make a reference without waiting for conciliation proceedings to begin or to be completed. As already stated, the expression 'at any time' in the context in which it is used postulates that a reference can only be made if an industrial dispute exists or is apprehended. No reference is contemplated by the section when the dispute is not an industrial dispute, or even if it is so, it no longer exists or is not apprehended, for instance, where it is already adjourned or in respect of which there is an agreement or a settlement between the parties or where the industry in question is no longer in existence."

The Labour Court has rightly moulded the relief to the extent that the employee will be entitled to a sum of Rs. 5,00/- towards compensation in lieu of the back wages to the respondent No. 2 on account of the delay in filing the claim petition. No interference is required under Article 226 of the Constitution of India.

Finding on Point No.iii:

So far as the third point is concerned as to whether the Irrigation Department is covered under the definition of the Industry. The petitioner has stated that the Irrigation Department is not covered under the definition of industry.

The matter has already been adjudicated in the case of State of U.P. Vs Presiding Officer, Labour Court & another reported in 2003(96) FLR 317 by the Uttaranchal High Court by his Lordship Hon'ble Mr. Justice P.C. Verma after referring the judgment of the Apex Court in Des Raj & others Vs State of Punjab & others and Bangalore Water Supply & Sewerage Board Vs A. Rajappa's case. Relevant paragraph 13 & 14 of the judgment of the Uttaranchal High Court are quoted below:

> *"The Apex Court in Des Raj and others Vs State of Punjab and others reported in 1988 (57) FLR 176 (SC), after applying the aforesaid text on the nature of activities carried on by the Irrigation Department held that Irrigation Department is an 'Industry':*
>
> *Since the Kalagrah unit is the branch of Irrigation Department, therefore, the same is also an Industry within the definition of 'Industry' under the U.P. Industrial Disputes Act in view of the law laid down by the Apex Court in Bangalore Water Supply and Sewerage Board Vs A. Rajappa's case:*

In this regard, the Labour Court has also recorded a finding to that effect:-

> " माननीय उच्च न्यायालय द्वारा उ0प्र0 राज्य द्वारा अधि0 अभि0 सुरंग एवं विद्युत गृह डाकपत्थर, देहरादून बनाम श्रम न्यायालय, देहरादून में दिट याचिका संख्या 21510/2000 में दिनांक 8 मई 2000 को दिए गए निर्णय के अनुसार सिंचाई विभाग इन्डस्टी की परिभाषा में आता है।"

The Irrigation Department has been held to be an industry and as such, I find no infirmity in the order passed by the Labour Court.

Conclusions:

The workman has set up his case that he was continuously working from 1-12-1987 to 6-6-1992 with the employer and before terminating his services, he has completed 240 days of working in preceding of months and that the provisions of Section 6-N of the U.P. Industrial Disputes Act, 1947 has not been complied with by the employer and therefore, termination order is wholly illegal.

In view of the findings recorded above, I do not find any infirmity in the order passed by the Presiding Officer, Labour Court. The findings recorded by the Labour Court are findings of fact and this court, therefore in exercise of powers under Article 226 of the Constitution of India, declines to interfere with the findings recorded by the Labour Court.

Accordingly, writ petition is dismissed. No order as to costs.

(Rajesh Tandon, J.)

Dt. 27.07.2004
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